



# **Beware of the Credit Shark**



The Fair Debt Collection Practices Act (FDCPA) gives consumers (you) some protection from harassing creditors.

## ***Who are the harassing creditors (Credit Sharks)?***

Credit sharks are collection agencies with a *collect by any means necessary* mentality. It's the agency that obtains your debt from the actual lender (not the lender itself), usually a separate department in the lender's business or an outside agency that just does debt collection. For example, Risk Management Services (R.M.S.) is a subsidiary of Sears that handles Sears' collections. If you default on payments for your Sears' Snapper Lawnmower 700 Series, Sears hands your account over to R.M.S. for collection. R.M.S., not Sears, would be the "credit shark".

## ***Rules to Keep Credit Sharks Caged***

- **Validate the Debt.** If you have any doubts about whether you actually owe the debt or the amount of the debt, request validation. The shark must stop all collection efforts on any disputed portion of the debt until it can obtain evidence that the disputed portion is valid.
- **Enforce the rules about when a shark cannot communicate with you.**
  - Sharks cannot communicate with you at time or places that are known to be inconvenient, such as Thanksgiving, Christmas, and New Years, or any day between 9:00pm and 8:00am.
  - No shark can invade your waters if they know you have an attorney. Your attorney's name and address must be readily ascertainable. If the credit sharks contact you, tell them to call your attorney.
  - Credit sharks cannot attack while you are at work when they know or have reason to know that your employer does not allow such communications. If a creditor contacts you at work, send a letter, certified mail, return receipt requested, informing the shark not to contact you at work.
  - The FDCPA also allows you to write the sharks and let them know that you either refuse to pay the debt or you do not want them to contact you again concerning the debt. Use caution when exercising these options on a valid debt, for it will leave the sharks with just one alternative – filing a lawsuit against you. Only do this, then, if and when you really believe you do not owe the debt.
- **Harassment.** Sharks cannot use criminal means or threat of harm to scare you into collection. They also can't destroy your reputation, damage any of your property, or use obscene or profane language (including name-calling, racial or ethnic slurs, and other derogatory comments that are akin to abusive or obscene language).
- **Even Sharks Must be Honest.** A credit shark should never lead you to believe that he's a representative of the federal or state government. And he can't misrepresent the status of the debt or claim compensation for any services rendered. For example, the shark can't claim that there is a judgment ordering you to pay the debt when none exists, he can't have you thrown in prison (he could only report you for something you've done that's actually illegal), and he can't claim to be an attorney if he's not (but there are attorney debt collectors).
- **Even Sharks Must Play Fair.** The FDCPA strictly prevents credit sharks from adding fees or expenses to the balance unless such fees and expenses are authorized by the original contract that created the debt or allowed by state law.

### ***How Do Sharks Get Punished***

When a debt collector has violated the FDCPA, you have two options to enforce the act. First, you can sue the debt collector and attempt to recover damages directly. This might be an uphill battle, largely because you need convincing evidence of the violation and even if you have it the court will only award you actual damages (which, in most cases, is just to your pride). But if you lost a job or wages because of illegal debt collection practices, you might be able to get compensation.

Second, you can file a complaint with the Federal Trade Commission ([www.ftc.gov](http://www.ftc.gov)) or with your local state consumer protection agency. In your complaint, provide as much details about the violation as possible. Include the date, time, place and nature of the violation. If you've recorded the violation, send a copy with the complaint. If there are any witnesses to the complaint, provide statements from them. You should also send a copy of your complaint to the debt collection agency and the original creditor. This may prompt the original creditor to take the account away from the collection agency and pursue other means of collection.

### ***What Should I Really Do When the Sharks Arrive?***

- **Establish Boundaries.** Take control of the conversation. Tell the credit shark that you do not mind providing an update once a month. Remember, the credit shark's goal is to get you so emotional that you start making emotional, rather than rational, decisions, like agreeing to pay more than you can. Tell the credit shark when and where you will accept calls about the debt, such as at your home between 7:00pm to 8:30pm. Finally, let the shark know that the only subject you will discuss is the debt and whether there has been a change in your financial situation that will allow you to pay the debt. Most important, stick to the rules.
- **Awake the Sharks When Ready to Pay.** Some sharks become idle waiting for you to make a move. In this case, the credit collectors have lost contact with you, stopped collection efforts, or do not have your phone number. These are the ones who will send letters after you have moved. In any event, you do not want to initiate contact with these creditors until you are ready to either pay the debt or start a payment plan. The same rules of engagement apply even with these sharks. Before you awake them, save enough money to offer a settlement to fully satisfy the debt. Make sure to get the offer in writing before making the payment. Then, have the credit shark send you a letter stating that payment has been received and the account settled.
- **Provide Necessary Information Only.**
  - Regardless of how you encounter a these sharks, they will always attempt to probe for all the information they can get. Respond simply that all the information in their system is correct and you are not calling to provide updates but to make a proposal. If they insist on collecting information, hang up the phone and try another day. Or, if you have more than one creditor, move to the next one. If you do agree to terms, make sure that you get everything in writing before you make a payment.
  - Even you find all of this impossible or just cannot get the shark to swim as you wish, just remember to relax. The sharks are there to cause you to react before you think. If you do not remember anything else, do not let the sharks get you upset. If you feel like you're getting upset, hang up the phone. You don't need the last word. The shark's reasoning is they have a chance to get you to pay as long as you are on the phone and emotionally unstable. But he knows that your telephone cradle is just as powerful as the harpoon that the shark hunter uses on *National Geographic Explorer*.

	<b><u>Camp Casey Legal</u></b> Maude Hall Rm. 235, 730-3660	
<b><i>This information paper is one of a series of informative handouts containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation. This information paper is distributed to persons eligible for legal assistance under 10 USC 1044.</i></b>		